MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2017 / 2018 SESSION

UCP4612 – CRIMINAL PROCEDURE I

(All Sections / Groups)

28 OCTOBER 2017
Reading Time: 09:00 a.m. – 09:15 a.m.
(15 Minutes)

Answering Time: 09:15 p.m. – 12:15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.

2. This question paper consists of 3 pages with 4 questions only.

3. Attempt **ALL** questions in **PART A** which is **COMPULSORY**, and any **ONE** question in **PART B**. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall **CLEAN** and **ORIGINAL** copies of (i) Criminal Procedure Code; and (ii) Penal Code. Students are not allowed to lend or borrow any statutes during the Examination.

5. Write all your answers in the Answer Booklet provided.

PART A: Compulsory

Instruction: Attempt **ALL** questions.

QUESTION 1

(a) Saving clause is a provision in a contract, statute, or other legal document containing an exemption from one or more of its conditions or obligations. (Adapted from *English Oxford Living Dictionaries*)

Explain the effect of saving clause under section 4 of the Criminal Procedure Code to the criminal justice process in Malaysia.

(5 marks)

(b) The Public Prosecutor has vast powers under the supreme law of the country. Despite that there are provisions laid out in a multitude of statutes which requires for "sanction" and "consent" prior to institution of criminal prosecution and the need for an "authorisation in writing" to conduct a criminal prosecution.

Discuss the necessity of sanction and authorisation in writing in criminal prosecution.

(20 marks)

(Total: 25 Marks)

QUESTION 2

"The Criminal Procedure (Amendment) Act 2006 was the first major piece of legislation to reform the criminal process in Malaysia for 20 years and represented an attempt not only to deal with specific problems relating to police practice and the pre-trial process, but also to single out Malaysia as a progressive state within Asia committed to the Rule of Law. The problem...however, is that while many of the reforms appear to be a welcome attempt to protect suspects in police custody from abuse..., to better regulate police investigations and to improve the overall quality of justice administered pre-trial, a doubt lingers as to the direction of that reform and of the values guiding the criminal process." (Salim Ali Farrar, "*The 'New' Malaysian Criminal Procedure: Criminal Procedure (Amendment) Act 2006*" Asian Criminology (2009) 4:129–144)

Critically analyse Section 113 of the Criminal Procedure Code in light of the above statement.

(25 Marks)

Continued...

QUESTION 3

Tom, a Detective Corporal and Jerry, a Police Sergeant, went together to the scene of the killing of a calf by a railway train. They failed to find the owner of the calf and agreed to accept RM150 from the local village head for allowing Orang Asli folk to take away meat from the carcass. Tom and Jerry failed to account to the Government Treasury for this money. They were charged under section 409 of the Penal Code.

The charge reads as follows:

> That you on or about 26 October 2016, at Jasin District, State of Melaka, being jointly entrusted with certain property, to wit, cash RM150 collected for the sale of meat from an unclaimed dead calf, in your capacity as a public servant and that you thereby committed an offence punishable under section 409 of the Penal Code.

During the trial the charge was amended to one under section 406 with an alternative charge under section 403 of the Penal Code.

Based on the above facts, answer the following questions:

(a) Draft the amended and alternative charge as mentioned above.

(5 Marks)

(b) Advise Tom and Jerry in relation to amendment of the charge during trial and the legality of tendering an alternative charge.

(20 marks)

(Total: 25 Marks)

Continued...

PART B: Optional

Instruction: Attempt **ONE** question **only**.

QUESTION 4A

On 4 March 2017, at 4.30 p.m. Inspector Ali personally received a phone call from a civilian who introduced herself as Zalika. She reported that a car bearing registration no. MAA 5945 was carrying drugs from Kuala Lumpur to Melaka via PLUS Highway. The car will be entering Simpang Ampat Toll at 5.00 p.m. Without reducing the report into writing, Inspector Ali rushed with five policemen to Simpang Ampat Toll and managed to stop the car which was driven by one Abang Long Fadil. When the boot was opened, Sergeant Gopal recovered five small packages of heroin inside a big red shopping bag. He arrested Abang Long Fadil and made an arrest report at the police station. Two days later, Zalika went to the police station and lodged a formal report which was recorded by Constable Haris. Abang Long Fadil was subsequently charged under Section 39B(2) of the Dangerous Drugs Act 1952 for drug trafficking. During the trial, the police report made by Zalika and Sergeant Gopal was not tendered in evidence by the prosecution.

As Abang Long Fadil's defence counsel, you are required to advise him.

(25 marks)

QUESTION 4B

Daniel was charged under section 302 of the Penal Code. He was first brought before the learned Magistrate where the charge was read and explained to him without his plea being taken. The prosecution then applied for a mention date pending the submission of the medical reports. The defence counsel responded by requesting that the case be transmitted to the High Court without further delay. The Magistrate acceded to the defence and transmitted the case to the High Court for trial. However, at the High Court, after hearing oral arguments by the prosecution, the judge re-transferred the case down to the Magistrate under section 417(1)(e) and (aa) of the Criminal Procedure Code.

Submit on the validity of the transmission by the Magistrate and the subsequent re-transfer by the High Court.

(25 marks)

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